

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

MCCAIN-PALIN 2008, INC.; and UNITED
STATES OF AMERICA,

Plaintiffs,

v.

JEAN CUNNINGHAM, et al.,

Defendants.

Case No. 3:08cv709

AFFIDAVIT

NANCY RODRIGUES, whose signature is affixed below, being first duly sworn and under penalty of perjury, states the following:

1. I am the Secretary of the Virginia State Board of Elections and have been such during all times mentioned herein. This affidavit is based upon my own personal knowledge with regard to the matters contained herein.

2. As an agency of the Commonwealth of Virginia, the State Board of Elections has a relatively small staff with 31 classified employees on payroll.

3. The 2008 Democratic National Convention was held 25 – 28 August 2008 in Denver, Colorado. The identity of the Democratic nominees for the offices of President and Vice President of the United States was received by the State Board of Elections (“SBE”) from the Democratic National Committee on Friday, 29 August 2008.

4. The 2008 Republican National Convention was held on 1 – 4 September 2008 in Minneapolis, Minnesota. The identity of the Republican nominees for the offices of President and Vice President of the United States was received by the SBE from the Republican National Committee after 3:00 P.M. on Friday, 5 September 2008.

5. The SBE, consisting of the three (3) individuals appointed by the Governor of Virginia and confirmed by the Virginia General Assembly, had met pursuant to the requirements of the Virginia Freedom of Information Act on 24 June 2008 to determine, by drawing, the order in which the major political party candidates would appear on the Presidential election ballot. The SBE met again on 8 September 2008 to determine the order in which the independent and third party candidates would appear on the Presidential election ballot.

6. The staff of the SBE completed all work on certification of candidates and the form of the official Presidential paper ballot on 8 September 2008. The certification of candidates was sent to the General Registrars of the one hundred thirty four (134) jurisdictions in the Commonwealth via e-mail on 9 September 2008 at 8:44 a.m. so that the preparation by the local Electoral Boards and General Registrars of the ballots to be used in the November 2008 Presidential election could begin. The form of the official Presidential paper ballot, which is the only ballot prepared by SBE staff for use by the 134 jurisdictions, was mailed on 9 September 2008 to the nine (9) localities in the Commonwealth that use local printers.

7. The Electoral Boards of the 134 jurisdictions in the Commonwealth are required by Virginia law to have the official ballots printed in sufficient numbers to meet the demand for ballots required on or before the day of the election. The Electoral Boards of the 134 jurisdictions in the Commonwealth contract with their voting equipment vendor or a printer

certified by their voting equipment vendor and, if paper ballots are used, they contract with the same or another printer for the printing of the official ballots for their respective jurisdictions. The 134 jurisdictions in the Commonwealth also contract with one of the four (4) ballot printers certified to print optical scan and/or Direct Recording Electronic voting equipment ballots. Nine (9) jurisdictions in the Commonwealth also contract with a local printer to print their paper ballots. The staff of the SBE provides each voting equipment vendor with the certification of candidates needed to prepare the official ballots. The vendors or ballot printers forward the official ballot proofs to the staff of the SBE and, for certain voting systems, to the General Registrar and/or Electoral Board of each jurisdiction for review and approval. After review, the staff of the SBE sends notification to the local Electoral Board by fax or email. Because several counties and cities encompass multiple Congressional districts and a number of local offices had to be included on the ballots, there were 262 distinct absentee ballot styles and 338 distinct voting equipment ballot styles in the 134 jurisdictions of the Commonwealth required for the November 2008 Presidential election. These numbers do not reflect the drafts requiring corrections that were received by the State Board of Elections. All absentee ballots were reviewed by the staff of the SBE with notification sent to each of the respective jurisdictions between 9 September 2008 and 30 September 2008, 35 days before the November 4, 2008 general election.

8.. Applications for absentee ballots must be made by individual voters to the offices of the Electoral Boards and/or General Registrars, and absentee ballots are thereafter mailed at the direction of the local Electoral Boards pursuant to the provisions of Chapter 7, Title 24.2 of the Code of Virginia. The staff of the SBE maintains a database with information on voters

known as the Virginia Elections and Registration Information System (VERIS). The source of the data within VERIS is the local General Registrars, who are required to in-put such data directly into the VERIS database. The data placed in the VERIS database by the local General Registrars at the request of the staff of the SBE due to this litigation includes, inter alia, the date on which a UOCAVA voter's absentee ballot application was processed for the 4 November 2008 Presidential election; the date an absentee ballot was sent to such voter; and the date an executed ballot was received by the locality from such voter.

9. According to VERIS data as of 5 March 2009 there were 2,114 absentee ballot applications received by Local Electoral Officials by 5 October 2008 whose absentee ballots were mailed to UOCAVA voters less than 30 days before the November 4, 2008 election. Most of these ballots were from the following jurisdictions within the Commonwealth.

- a. Prince William County: 880
- b. City of Virginia Beach: 808
- c. Spotsylvania County: 68
- d. Fairfax County: 54
- e. Alexandria: 41

Of these 2,114 ballots mailed out to UOCAVA voters, 408 were not returned to Local Electoral officials, including 351 from the following jurisdictions

- a. City of Virginia Beach: 172
- b. Prince William County: 117
- c. Fairfax County: 45
- d. City of Staunton: 10

- e. Mecklenburg County: 7

In addition, 96 of the 2,114 ballots were received by Local Electoral officials in after the close of business on 4 November 2008, and therefore not counted. Only the three following localities had more than one (1) such absentee ballot:

- a. City of Virginia Beach: 60
- b. Prince William County: 27
- c. Spotsylvania County: 3

10. I am aware that the Intervenor in this lawsuit has performed similar calculations using VERIS data and arrived at similar – but not identical – results. I do not consider the differences between our totals and the Intervenor’s totals to be material.

11. It is evident that the vast majority of uncounted votes arising from the late mailing of absentee ballots to UOCAVA voters occurred in just two of the 134 jurisdictions in Virginia, namely, the City of Virginia Beach and Prince William County. I believe a contributing factor was the relatively late date of the nominating conventions for the two major political parties, and the late selection of minor party candidates, which together compressed the time available to have ballots printed and distributed.

12. Under Virginia law, the SBE has certain statutorily prescribed duties concerning the conduct of elections, but only Local Electoral officials in the 134 jurisdictions in Virginia have the authority and ability to mail absentee ballots to UOCAVA voters.

13. The foregoing statements are true to the best of my knowledge and belief.

Nancy Rodrigues

Nancy Rodrigues
Secretary,
STATE BOARD OF ELECTIONS

COMMONWEALTH OF VIRGINIA,
CITY OF RICHMOND, to wit:

The foregoing Affidavit was subscribed and sworn to by NANCY RODRIGUES, before
me, this 17th day of July, 2009.

My commission expires:

June 30, 2010 270131

Andrew T. Walker (SEAL)
Notary Public

